

Justice Delayed, Arbitration Denied: The Procedural Paradox in India

Introduction

Arbitration was brought into the picture as a substitute for conventional litigation with the assurance of being quicker, more adaptable, and economical. Yet, in India, the experience of arbitration has tended to go off track from the intended aim. Regardless of numerous rounds of legislative change and judicial attempts to make arbitration easier, procedural complexities still undermine the efficiency of arbitration. What was intended to be a means of expeditious justice has, ironically, become bogged down in the very procedural slowdowns it sought to avoid. It is now time to reconsider the arbitration system in India and face the unpleasant reality that the procedure itself is now one of the primary reasons for delay.

Contingencies in Arbitration Law

One of the primary reasons why **arbitration in India** often fails to provide speedy justice is the excessive involvement of the judiciary at various stages of the process. Even though the **Arbitration and Conciliation Act, 1996** (the "Act") was based on the UNCITRAL Model Law, with a focus on court intervention being minimal, the actuality has been quite the opposite. Courts often intervene under the appointment of arbitrators under Section 11, challenges to jurisdiction under Section 16, interim measures under Section 9, and enforcement or setting aside of awards under Sections 34 and 37. While the 2015 and 2019 amendments aimed to curb such intervention by stipulating timelines and restricting grounds for challenge, a lack of uniform judicial interpretations has watered down such reforms. Every procedural break, from the **appointment of arbitrators** to the consideration of interim reliefs, can become months or years of litigation, negating the very essence of **arbitration**.

Even the appointment of arbitrators itself is usually the first serious procedural hurdle. Ideally, parties should agree on the appointment between themselves to avoid delays. Disagreements do occur, but most frequently, especially in commercial disputes against state entities. Thereby, parties seek the courts for appointment under Section 11. While the Supreme Court in *Duro Felguera S.A. v. Gangavaram Port Ltd.* (2017) underscored constrained judicial examination at this level, actual application is patchy. Delays in judicial appointments of arbitrators are additionally exacerbated when public sector undertakings (PSUs) are involved, as bureaucratic chains weigh heavily on decision-making. These end up taking years before proceedings even start.

After constituting the tribunal, there is procedural bickering. Lack of a consistent method of pleadings, discovery, and evidence production is usually followed by unwarranted extensions. Arbitrators, afraid of future challenges to their awards, end up overcompensating and granting undue documentation, long hearings, and adjournments. As against court proceedings with a fixed procedural code under the Code of Civil Procedure (CPC), arbitration has no fixed procedural code, which in turn should permit flexibility. But this flexibility is commonly abused, with parties following court-like rituals. Oral hearings, which are intended to be brief and time-framed, take many sessions strung out over months. The **2015 Amendment Act** added a 12-month timeframe for the delivery of an arbitral award, but Section 29A also allows for extensions by mutual agreement or by the court, thus reducing its effect to naught.

There is yet another tier of delay due to appeals against arbitral awards under Section 34 of the Act. While the legislative intent was to make such appeals limited and narrowly aimed at procedural

defects or contraventions of public policy, Indian courts have taken a broad interpretation of "public policy," introducing a kind of appellate review again. Such judicial propensity to revisit merits on the pretext of procedural examination weakens arbitration's finality.

Related Case Laws

For example, in *ONGC v. Saw Pipes Ltd.* (2003), the Supreme Court broadened the meaning of public policy to encompass "patent illegality," creating a precedent that bred frequent challenges. Although subsequent judgments like *Associate Builders v. DDA* (2015) and *Ssangyong Engineering v. NHA* (2019) tried to narrow this scope, the inconsistency between lower court rulings continues to delay the enforcement process.

The Solution

Institutional arbitration, which would have avoided several procedural inefficiencies, is underdeveloped in India. Many arbitrations are still ad hoc, with no standardized procedural rules, administrative control, or professional management. Institutional frameworks, like those operated by the Singapore International Arbitration Centre (SIAC) or the London Court of International Arbitration (LCIA), maintain strict timeline discipline and procedural discipline. Although the 2019 Amendment Act had made provisions for the establishment of the Arbitration Council of India (ACI) to grade institutions and encourage professionalism, implementation has been tardy. Until robust institutional frameworks gain traction, arbitration in India will remain susceptible to procedural drift.

Conclusion

In summary, arbitration in India stands at a crossroads. The promise of efficiency that originally characterized it has been overwhelmed by procedural complexities and judicial overreach. To revive trust in arbitration, India has to shift from procedural formalism to procedural pragmatism, prioritizing substance over form and speed over ritual. Only then can procedure be at the service of justice and not against it, so that arbitration can finally play its role as the mode of choice of dispute resolution in India's fast-changing commercial world.